

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EARLAND JAMES COLLINS,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 265240
Wayne Circuit Court
LC No. 04-010664-01

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, assault with intent to commit armed robbery, MCL 750.89, first-degree home invasion, MCL 750.110a(2), felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to 28 to 100 years' imprisonment for the armed robbery conviction, 28 to 100 years' imprisonment for the assault with intent to commit armed robbery conviction, 20 to 100 years' imprisonment for the first-degree home invasion conviction, one to four years' imprisonment for the felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred in denying his motion for a mistrial on the basis that the prosecution's main witness, robbery victim Geneva Halliday, spontaneously testified that defendant refused to participate in a live lineup despite the trial court's ruling excluding this evidence from trial. We disagree.

"We review for an abuse of discretion a trial court's decision on a motion for mistrial." *People v Bauder*, 269 Mich App 174, 194; 714 NW2d 506 (2005). "A trial court should grant a mistrial 'only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial.' " *Id.* at 195, quoting *People v Ortiz-Kehoe*, 237 Mich App 508, 514; 603 NW2d 802 (1999). "When a motion for a mistrial is premised on the unsolicited outburst of a witness, it should be granted only where the comment is so egregious that the prejudicial effect cannot be cured." *Id.* Additionally, this Court has held that "unresponsive testimony by a witness does not justify a mistrial unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony." *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990).

The record reflects that the trial court granted defendant's motion in limine to exclude evidence that defendant refused to participate in a live lineup. At trial, the prosecutor asked Halliday about the procedure of a photographic line up that took place. There is no indication that the prosecutor's questions were designed to elicit testimony about the live lineup. There is also no indication that Halliday's ignorance of the trial court's evidentiary ruling was the result of the prosecution's plan or design. After defendant objected to Halliday's testimony, the trial court issued a curative instruction to the jurors that was sufficient to cure any prejudicial effect. The judge stated, "Ladies and gentlemen, you are to disregard that last statement by the witness, okay. No live lineup took place and that's – and that's the end of it. Okay. It doesn't matter the reasons why. Okay. Go ahead." "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). On this record, we conclude that the irregularity was not so egregious that the prejudicial effect could not be cured by the trial court's instruction. Defendant's ability to obtain a fair trial was not impaired.

Furthermore, we are satisfied that, regardless of Halliday's comment, there was overwhelming evidence of defendant's guilt. Halliday, her son Cale Mannesto, and her husband Gary Mannesto, testified that defendant robbed them. Both Halliday and Cale made solid identifications of defendant. Cale, who had faced defendant head on for at least five seconds during the robbery, identified defendant both at the photographic lineup and at trial. At trial, Halliday waited to see defendant's profile before identifying him. Mannesto also testified that he had seen defendant run out to a blue mini van and speed away from the crime scene. Patrick O'Hara, Halliday's neighbor, testified that he noticed an old blue mini van parked on the street near the Halliday home with the passenger seat reclined and occupied by an African-American male. At trial, Sergeant Steven Johnson of the Grosse Pointe Park Police Department, testified that he found a blue mini van the following morning about two miles from the crime scene. O'Hara testified that Grosse Pointe Park Police Detective David Loch took him to see the mini van and he recognized the vehicle as the one he had seen near the Halliday home. Johnson impounded the van and took photographs showing damage to the ignition and a water bottle on the front passenger seat. Heather Vitta, forensic scientist in the Biology and DNA unit of the Michigan State Police crime lab in Northville, testified that in her professional opinion, the DNA samples taken from the water bottle found inside mini van matched defendant's DNA.

The trial court did not abuse its discretion in denying defendant's motion for a mistrial.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Alton T. Davis

/s/ Deborah A. Servitto